Conservation of Biodiversity and Wildlife Habitat in Forest Development Planning on the Sunshine Coast

Complaint Investigation 000234

Forest Practices Board

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Table of Contents

The Investigation 1

Issues 1

Discussion 2

Was it appropriate for the acting district manager to conclude that the criteria required to grandparent goat winter range were not met? 2

Should the district manager have been satisfied that biodiversity and wildlife would be adequately managed and conserved by the 1999-2003 FDPs? 8

Did the licensee place cutblocks in areas that had high biodiversity and wildlife values to pre-empt the areas from being given formal status under the Code? 13

Conclusions 14

Commentary 14

Recommendations 16

The Investigation

The Sunshine Coast Conservation Association (the complainant) reviewed three of International Forest Products' (the licensee) 2000-2004 forest development plans (FDPs) for forest licence A19220 in the Sechelt timber supply block. The licensee's Campbell River Division manages the area under two of those FDPs, the Nelson Island/Chapman and Grey Creek plan and the North Jervis Inlet plan. The licensee's Sechelt Division manages the area under the third FDP, the South Jervis Inlet plan.

The FDPs contained review comments and licensee responses to those comments from the previous year's plans which contained 371 cutblocks - 256 of which were proposed as category A. This was the first time the complainant saw how the licensee had addressed comments made in the review of the 1999-2003 FDPs. After viewing the review comments and licensee responses, they did not think the licensee had properly addressed comments about biodiversity in one of the 1999-2003 FDPs, made by one member of the complainant's association. They also believed that the 1999-2003 FDPs did not adequately address comments about biodiversity and wildlife made by a forest ecosystem specialist with the Ministry of Environment, Lands and Parks (MELP, now the Ministry of Water, Land and Air Protection). MELP's block-specific comments recommended not approving 25 of the 256 proposed category A cutblocks.

Following the review of the 2000-2004 FDPs, the complainant talked to MELP staff and discovered that the Sunshine Coast Forest District (the district) and MELP had not recognized mapped goat winter range and had not given it formal status as ungulate winter range (UWR) under the Forest Practices Code. MELP and the Ministry of Forests (MOF) had agreed on provincial criteria for recognizing (grandparenting) winter ranges that were mapped before October 15, 1998. UWR had been mapped in the district since the 1970s, but it had to be formally recognized before Code provisions for UWR would apply. The acting district manager had decided to not grandparent the UWR because he did not agree that the winter range information submitted by MELP met the provincial criteria.

The complainant also thought that the licensee placed cutblocks in areas that had high biodiversity and wildlife values to pre-empt the areas from being given formal status under the Code. The complainant submitted a formal complaint regarding the 1999-2003 FDPs and UWR to the Forest Practices Board in March 2000.

Issues

This investigation focused on the decision of the Sunshine Coast Forest District's acting manager to not recommend grandparenting mapped UWR, and on the district manager's approval of three 1999-2003 FDPs prepared by the licensee.

Three issues were examined in the investigation of the complaint:

- Was it appropriate for the acting district manager to conclude that the criteria required to grandparent goat winter range were not met?
- Should the district manager have been satisfied that biodiversity and wildlife would be adequately managed and conserved by the 1999-2003 FDPs?
- Did the licensee place cutblocks in areas that had high biodiversity and wildlife values to pre-empt the areas from being given formal status under the Code?

Discussion

Was it appropriate for the acting district manager to conclude that the criteria required to grandparent goat winter range were not met?

a) Background

Even before the government brought the Code into force, government agencies had to balance the impacts of timber harvesting with other forest resources. A first step in dealing with potential conflicts is identifying and quantifying forest resources. Government has long-standing inventories of the timber resource in the province. Other forest resources may have been recorded, but in an ad hoc manner. For example, in the early 1970s, MELP started doing remote sensing and helicopter surveys to record goat winter range in the district. From 1996 to 2000, remote sensing, helicopter surveys and ground surveys were used to update that inventory for the district. This inventory allowed resource managers to consider goat winter range values in operational planning.

When the government introduced the Code, FDPs were required to contain specific information about other forest resources if information had been made known under the Code. The *Operational Planning Regulation* (OPR) section 1 states:

> "known" means, when used to describe a feature, objective or other thing referred to in this regulation as "known," a feature, objective or other thing that is:
>
> (a) contained in a higher level plan; or
>
> (b) otherwise made available by the district manager or designated environment official at least 4 months before the operational plan is submitted for approval.

In 1998, the government fundamentally changed the Code to give licensees more certainty that cutblocks approved in FDPs could be logged. However, identification, strategies and inventory

for most forest resources had not progressed to the point of government making information about them known under the Code. Ungulate winter range (UWR) is an example of one such resource.

Before 1998, the Code did not even define UWR. However, the 1998 change added the definition of UWR to the OPR. For a short time in April 1998, the *Timber Harvesting Practices Regulation* prohibited clearcutting in UWR made known under the Code unless clearcutting had been prescribed in an approved FDP. In December 1998, government changed that provision of the Code. The OPR now requires that, if a cutblock is in known UWR and the objectives for the UWR have been made known under the Code, the objectives must be included in the FDP. If those objectives allow harvesting, then the silviculture prescription must describe what site conditions are required after harvest to accommodate the objectives for ungulates.

The 1998 changes to the Code also enabled a process to grandparent UWR. Below is the definition of UWR from the definitions section of the OPR. The grandparenting portion of the definition of UWR is in section (c) of the definition:

> "ungulate winter range" means an area that is identified as being necessary for the winter survival of an ungulate species by any of the following:
>
> (a) a higher level plan;
>
> (b) the chief forester and deputy minister of Water, Land and Air Protection under section 69;
>
> (c) a wildlife management plan or strategy approved before October 15, 1998
>
> (i) by
>
> (A) the district manager or regional manager, and
>
> (B) the designated environment official,
>
> (ii) by the chief forester, or
>
> (iii) by the ministers,
>
> but a wildlife management plan or strategy approved under this paragraph expires on October 15, 2003, unless
>
> (iv) modified under paragraphs (a) or (b), or
>
> (v) confirmed before that date under section 69.

Ungulate winter range had been identified in the district before October 15, 1998, but UWR was grandparented and made known only for Tree Farm Licence (TFL) 10.

b) Compliance with the Code

On August 6, 1998, MOF and MELP issued a memorandum describing the intent of the definition of ungulate winter range and the procedures for grandparenting UWR by the October 15, 1998 deadline. On October 4, 1998, MELP staff submitted what they believed to be previously mapped winter ranges for ungulates to the MOF for agreement to grandparent as UWR. MELP stated: "These habitats have been identified as essential for the winter survival of ungulates using the best information available and data obtained via literature review, helicopter survey flights and observations of ungulate activity, air photo review, professional interpretation and ground truthing field visits in many areas." On October 13, 1998, the acting district manager met with MELP staff and explained that he had decided that the mapped winter ranges did not meet criteria, agreed to between MOF and MELP, for grandparenting as winter range.

Section 1 of the OPR required, at the time, that the area had to be identified as being necessary for the winter survival of an ungulate species in a wildlife management plan or strategy that was identified and approved by both the district manager and the designated environment official. Agreement to grandparent UWR is a discretionary decision. The acting district manager had the authority to refuse to agree, therefore the decision to not grandparent ungulate winter range complied with the requirements of the OPR.

c) Exercise of discretion

A discretionary decision may comply with the Code in the sense that the decision-maker had the authority to make the decision in question. Even so, the Board will comment on the exercise of statutory discretion. The standard the Board uses in evaluating discretionary decisions is not whether, in the Board's opinion, the decision was the best decision. Rather, the standard is: "Was the decision consistent with sound forest practices, did it achieve the intent of the Forest Practices Code and was it based on an adequate assessment of available information?"

In this case, the Code provision for grandparenting UWR would expire on October 15, 1998. On August 6, 1998, MOF and MELP issued a joint memorandum, which included procedures for grandparenting winter ranges into UWR for Code purposes. The ministries developed criteria to go with the procedures in that memorandum. An e-mail dated September 8, 1998, outlined the following specific provincial criteria, agreed to by MELP and the MOF, for grandparenting of UWR:

> Criteria for grandparenting, October 15, 1998
>
> 1. Winter ranges that are clearly mapped on an operational scale. This scale must be more detailed than 1:250,000 or 1:125,000. As an example 1:20,000 is a good scale, however an exact map scale cannot be specified as different scales may have been used over time.

2. The chief forester, regional manager or district manager must have agreed with MELP regional staff that these operationally mapped areas were winter ranges prior to April 2, 1998. ESA [environmentally sensitive areas as depicted on forest cover maps] mapping alone does not meet this criteria. However, where ESA mapping was used by the district manager to make operational planning decisions regarding ungulate winter range management, ESA mapping would be acceptable.

3. The operationally mapped winter ranges were incorporated into, and netted out of, a TFL management working plan (MWP), or a chief forester annual allowable cut (AAC) determination for either a TFL or timber supply area (TSA), and maps of these winter ranges are available.

4. Evidence that criteria 1-3 are met must be provided and agreed to at the district level for grandparenting by October 15, 1998. If evidence of any criteria is not available, then those winter ranges will instead need to be formally established as ungulate winter ranges prior to October 15, 2003 according to the provisions outlined in the Operational Planning Regulation and will be accommodated in the interim according to a provincial MOF/MELP memorandum of understanding.

The September 8 e-mail stated that winter ranges meeting all of the criteria would be grandparented. MELP staff believed they had met the first three criteria in their submission of October 4, 1998. MELP included the rationale for meeting the criteria in the background section of the submission. In order to be grandparented, the regional manager or district manager needed to approve the UWR and strategy by October 15, 1998. The district manager acknowledged receipt of MELP's submission on October 6, 1998, and at that time he expected to finalize the process by October 15, 1998. On October 13, 1998, the district manager was on vacation, so the acting district manager made the decision instead and explained it to MELP. He stated:

> ...I have concluded that the mapping for the TSA does not meet the criteria specified by Chief of Wildlife and the Forest Service. In particular, I do not feel that the 1:50,000 [mapping] should be considered operational mapping as outlined in criterion 1. Further, there is not sufficient evidence to conclude that the conditions of criterion 2 are met, i.e. ESA mapping is not good enough, and there has to be clear indication that the DM used ESA mapping to make operational planning decisions. In fact, there are many cases where blocks are approved even though they are within the ESA areas.

i) Did the mapped winter range meet the grandparenting criteria?

Criterion 1

The first criterion was that habitats be clearly mapped, and be at an operational scale.

The acting district manager noted that there was considerable variation in winter ranges between the licensee's FDP maps and the maps MELP had submitted for grandparenting. He reasoned that the MELP maps were too uncertain and imprecise for grandparenting. However, the Code's definition of UWR refers to modification of UWR before finalization by October 15, 2003. The designated environment official noted this in his submission to the district manager.

The acting district manager also decided that 1:50,000 mapping would not qualify as operational mapping in the district because FDPs are mapped at 1:20,000 scale. However, the Vancouver Forest Region, in an e-mail from September 1998 to district managers, indicated that mapping at a scale of 1:50,000 was an acceptable operational scale for mapping UWR in the region generally.

The Board does not consider the variation in mapping between MELP's grandparenting submission and licensee FDP submissions to reflect uncertainty or imprecision to an extent that would preclude use in UWR designation. The Board also finds that UWR, mapped at a 1:50,000 scale, was mapped at an operational scale. The Board finds that the maps submitted by MELP met criterion 1.

Criterion 2

The second criterion was that MOF had to have agreed with MELP staff that these operationally mapped areas were winter ranges prior to April 2, 1998. ESAs on forest cover maps, without more specific wildlife information, did not meet this criteria.

Both MOF and MELP agree that no formal agreement was in place before April 2, 1998. However, there was no requirement for the agreement to be formal. In fact, the criterion specifically refers to a form of informal agreement, where a district manager has used ESA mapping to make operational decisions. Some districts in the region had not mapped UWR but wanted to use the ESA inventory mapping as previously mapped UWR. It was not ESA mapping that was proposed for grandparenting in the Sunshine Coast Forest District.

Since the early 1990s, MELP staff had made FDP comments based on its own mapped winter ranges, not ESA mapping. Winter range maps were used during FDP reviews to red-flag areas of mountain goat presence, and MOF accepted that practice. MELP regional staff believed that this operational use of the winter range maps by the MOF and licensee meant that there was an informal agreement in place since the early 1990s, and therefore criterion 2 was met. The Board agrees and finds that the maps submitted by MELP met criterion 2.

Criterion 3

The third criterion was that the mapped winter ranges had to be incorporated into, and netted out of, a chief forester's annual allowable cut (AAC) determination. MELP submitted the same mapped winter ranges for grandparenting that they had submitted for a 1996 timber supply review. In that timber supply review analysis, most of the goat winter range was accounted for by way of other net-downs. For the remainder, the chief forester—with the district's input—concluded that the impact of mapped winter ranges on the timber supply review would be negligible. The Board finds that the mapped winter ranges had been netted out of the AAC determination, so criterion 3 for grandparenting was met.

Criterion 4

The last criterion was that evidence that criteria 1-3 had been met had to be provided and agreed to at the district level. The acting district manager believed that at least two of the criteria had not been met. The Board considered whether or not it was appropriate for him to come to this conclusion.

ii) Did MELP's submission meet the requirements of the process for grandparenting?

In addition to the four criteria, the acting district manager reasoned that grandparenting also required a clear agreement on management objectives between MELP and MOF in the district. He noted that the maps submitted for grandparenting (also used for the 1996 timber supply review) were an inventory of goat presence, and did not necessarily identify the best winter cover. In his view, the maps alone did not constitute a wildlife management plan because there were never agreed-upon management objectives for the mapped winter ranges.

The August 6, 1998 memorandum described the intent and the procedures to be followed for identifying and approving mapped ungulate winter range included in any wildlife management plan or strategy that was in effect on April 2, 1998. Further to that memorandum, the e-mail of September 8, 1998, outlined the process in greater detail, to help facilitate formal agreement for UWR. The legislation required that if there was an agreement, it needed to be made by October 15, 1998. The criteria for grandparenting was discussed above. Further direction in that same e-mail, under "Strategies for Managing Grandparented Winter Ranges," stated that clear management objectives were necessary. However, it also stated that "a quick template for providing these management objectives" could be prepared by appropriate MOF and MELP staff by the deadline. Once grandparented, these objectives could be fine-tuned to be confirmed by MOF and MELP by October 15, 2003, as required by the Code definition for ungulate winter range. This e-mail clarification—that a management plan or strategy did not necessarily have to exist before April 2, 1998—is also supported in other legislation. Subsection 69(3) of the OPR specifically provided for the district manager and designated environment official to establish management objectives for grandparented ungulate winter range where none was specified.

Regional MELP and regional MOF staff had developed a template of draft management objectives to be assigned to UWR when it was grandparented. The MOF region asked districts to submit management objectives for the UWR they were grandparenting, if MELP and the district could agree on the objectives. On October 14, 1998, the acting district manager and MELP staff signed a document titled *Objectives for Managing Ungulate Winter Range -Sunshine Coast Forest District*. However, the district manager later explained that these management objectives were only for the UWR they agreed to grandparent for TFL 10, located within the district.

Both the legislation and the September 8, 1998, grandparenting agreement created an expectation for MELP that their submission of October 4, 1998, would be approved. The submission met the September 8 criteria for grandparenting and provided MELP's proposed management strategies and objectives for the grandparented UWR in the Sunshine Coast Forest District. In addition, the Vancouver Forest Region encouraged the two ministries to agree on management objectives at the district level by October 15, 1998. Therefore, it was inappropriate for the acting district manager to conclude not to grandparent goat winter range in the TSA portion of the Sunshine Coast Forest District.

Should the district manager have been satisfied that biodiversity and wildlife would be adequately managed and conserved by the 1999-2003 FDPs?

a) Compliance with the Code

Section 41(1)(a) of the *Forest Practices Code of British Columbia Act* (the Act) requires an FDP to be "prepared and submitted in accordance with this Act, the regulations and the standards." Section 18 of the OPR requires wildlife habitat areas (WHAs), old-growth management areas (OGMAs) and UWR made known under the Code to be shown on the FDP maps. Objectives for known UWR must also be in the FDP. In the circumstances of this complaint, there were no WHAs, OGMAs or UWR made known by the government. Therefore, in regard to requirements for biological diversity and wildlife, the FDPs complied with section 18 of the OPR.

In addition, section 41(1)(b) of the Act requires that the district manager must be satisfied that a plan or amendment will adequately manage and conserve the forest resources of the area to which it applies. If a district manager were to approve an FDP but not be satisfied that such resources as biodiversity and wildlife would be adequately managed and conserved, that decision would not comply with the Code.

In the FDP approval letters, the district manager indicated that he was satisfied, and there is no indication that the decision was based on irrelevant factors. The Board finds that the decision complied with section 41(1)(b) of the Act.

b) Exercise of discretion

The licensee's FDPs requested approval of 256 cutblocks. MELP recommended not approving 25 for a variety of reasons, but all were subsequently approved. The district manager was

satisfied, under section 41(1)(b) of the Act, that biological diversity and wildlife resources would be adequately managed and conserved, if those 25 cutblocks and associated roads were developed. The Board considered whether that decision was based on an adequate assessment of available information regarding biodiversity, winter range and marbled murrelet habitat.

i) Biodiversity

Biodiversity Guidebook* and *Landscape Unit Planning Guide

During the review and comment period for one of the 1999-2003 FDPs, a member of the complainant's association raised concerns about biodiversity. That person commented that some biogeoclimatic subzones in the draft Chapman landscape unit were near the minimum old-growth requirement recommended for low biodiversity in the *Biodiversity Guidebook*. The association member also asserted that the public would not accept, and therefore that the area would not be given, a low biodiversity emphasis option.

The *Landscape Unit Planning Guide* (LUPG) contains policy that allows drawing down old-growth levels below the targets in the *Biodiversity Guidebook*. The LUPG advises that, where it differs from the *Biodiversity Guidebook* policy, the LUPG should supersede the *Biodiversity Guidebook*. The complainant asked the Board, "Does the current policy of allowing draw-down of old seral forests, to below the minimum thresholds recognized in the *Biodiversity Guidebook*, conflict with legislated obligations to adequately conserve forest values?" In answer, the Board recognized that, first, the levels in the *Biodiveristy Guidebook* for distribution of each seral stage are recommended target levels, not minimum levels. And second, the Board reasons that following the guidelines in the LUPG, even if they conflict with the recommendations in the *Biodiversity Guidebook*, does not necessarily mean biodiversity is not conserved. There may be other options that will allow biodiversity to be conserved over the long term.

Although the LUPG was not released until March 1999, MELP was aware of the policy that allowed a two-thirds drawdown below the target levels in low biodiversity emphasis option (BEO) landscape units. In addition to this policy, all landscape units were to be treated as having a low BEO until the landscape units were actually established and assigned a specific BEO.

MELP comments

In its general response to the FDPs, MELP explained that it did not support drawdown of the old forest habitats below the BEO target levels unless alternative areas had been agreed to as OGMAs.

The investigation found that, of 256 proposed category A cutblocks, 54 cutblocks were in biogeoclimatic subzones that contained a deficit of old-growth according to the draft BEOs for the draft landscape units described in an October 2, 1998, letter to all licensees. Most of the 54 cutblocks were proposed in second-growth forest. MELP either expected approval or implied that approval was appropriate in 46 of the 54 cutblocks. In addition, MELP did not comment

negatively on two of the remaining eight cutblocks. However, MELP did recommend that the other six not be approved. Five of those six cutblocks were in biogeoclimatic subzones that had less old seral forest than the two-thirds drawdown allowed. An example of MELP's comments on one of these blocks is, "Potential OGMA. Old growth in this area is very limited and well below targets. Recommended non-approval."

Licensee response

The licensee agreed that MELP concerns about biodiversity options were valid, but believed that they would best be addressed through landscape unit planning. The licensee reasoned that, until landscape units were established, they could simply manage biodiversity at the stand level as outlined in a district MOF and MELP agreement outlining wildlife tree patch retention rates. The licensee's block-specific commitments in the FDP, made in response to MELP's comments on biodiversity, followed this reasoning. In many cases, the licensee committed to addressing old-growth characteristics in silviculture prescriptions. The licensee made no block-specific comments about the old-growth deficit on the six cutblocks that MELP recommended not approving.

Policy advice

Two bulletins, offering advice to district managers when approving FDPs, were released concurrent with the FDP submissions and approvals.[i] *Code Bulletin 18* advised that district managers not approve FDPs on a cutblock-by-cutblock basis. However, at the same time it advised district managers to do a cutblock-by-cutblock review of FDPs and to identify to the licensee cutblocks that were not approvable and why they were not approvable. The second bulletin, titled *The Role of Public and Referral Agency Comments in the Application of Section 41(1)(b) of the Forest Practices Code of British Columbia Act*, advised that if a risk to a forest resource was identified in the review and comment period, the district manager should do a risk analysis to satisfy himself under section 41(1)(b) that the forest resource was managed and conserved. Both bulletins were new and not well understood at the time.

District manager reasoning

The district sent an analysis of remaining old seral forest in draft landscape units to all licensees on October 2, 1998. The cover letter explained that use of the material was voluntary and that OGMAs would not be established outside the landscape unit planning process. Despite this analysis, without further analysis of options available through landscape unit planning or higher level planning direction, the district manager felt he could not reject the FDP based on the possibility of an area becoming an OGMA.

The government released the *Landscape Unit Planning Guide* at the same time the district manager was considering approving the FDPs. Concerning landscape unit planning, government had committed to consulting with and mitigating impacts on licensees. Therefore, he did not know what level of draw-down of old seral stands would be acceptable. When he

made the decisions, the district manager shared MELP's concern that the best options to protect biodiversity may be lost, but he believed that other possibilities remained to establish OGMAs.

During the investigation, the district manager explained that in areas with very low levels of remaining old-growth forest, there were younger stands containing desirable old-growth attributes. In addition, he thought that it might be possible to accomplish some specific biodiversity objectives by shifting old seral capital between ecosystem variants or landscape units. His experience with field reviews indicated that cutblock boundary adjustments, wildlife tree patch placement, or partial-cutting strategies could be used to allow harvesting while protecting old-growth values.

The district was in the initial stages of landscape unit planning and much was uncertain. The Board finds that the district manager considered the evidence available to him at the time and was logically satisfied that biodiversity could be managed and conserved.

Nevertheless, the Board is concerned that the district manager's approval of cutblocks in areas with very low levels of remaining old-growth forest became a de facto strategic-planning decision. As a result, options for developing old-growth strategies in the landscape unit planning process may have been lost.

ii) Goat winter habitat

Even though the UWR had not been made known under the Code, the licensee showed winter range areas on two of the three FDPs. Those FDPs contained the licensee's strategy to refer silviculture prescriptions to MELP if requested in the FDP referral comments. On the third plan, the licensee removed winter range areas because no UWR had been made known under the Code and it said its information showed a different pattern of goat use. This plan did not contain any strategy for winter range management. Regardless of the state of the maps and strategies in the FDPs, MELP made general and cutblock-specific comments that addressed goat winter range in the FDPs. Both the licensee and district manager were aware of that information.

MELP wanted to maintain winter range that had been identified as being necessary for the winter survival of ungulates through previous inventories, noting that these areas were being assessed for designation under section 69 of the OPR. As an interim measure, MELP recommended that cutblocks in such winter range be changed to category I (for information only) on the final FDP, to facilitate further planning and co-operation between agencies and the licensee.

During the investigation, MELP explained that although some winter range could accommodate logging, other winter range could not. If a proposed category A cutblock is approved in winter range, the district manager had given the go-ahead to log, subject to silviculture prescription approval. There is no Code provision to allow a district manager to rescind approval of a cutblock in a newly established UWR.

In the block-specific comments, MELP had winter range concerns on 78 of the 256 cutblocks. Most comments were for cutblocks in the vicinity of mapped winter range and concerned the timing of operations. However, MELP asked that 16 cutblocks in two of the three FDPs (North and South Jervis) not be approved until they had a chance to field-inspect the cutblocks.

The licensee did not dispute the existence of winter range values identified by MELP in the block-specific referral comments. The licensee responded that the new provisions of the Code allowed licensees to obtain a certainty of approval before doing costly field reviews. Mapped winter range had not been made known under the Code and the cutblocks met the requirements of the Code. Therefore, the licensee refused to change the status from proposed category A to category I. The licensee committed to following MELP regional policy on timing restrictions near goat winter range, to consider block-specific comments, and to take necessary steps to incorporate resource values into block design. On the block-specific responses to MELP's comments, the licensee committed to conduct field reviews on 13 of the 16 cutblocks in 1999.

The district manager:

- knew that MELP did not want cutblocks approved in potential UWR;
- knew that MELP had recommended those cutblocks not be approved;
- knew that there was no information made known under the Code suggesting that goats were at risk due to loss of habitat;
- knew that MELP wanted joint agency/licensee field reviews prior to approval;
- believed that there was no legal basis for field reviews to be conducted before a cutblock was approved;
- knew that the licensee had committed to field reviews following approval of the cutblocks; and
- believed winter range issues could be dealt with at the stand level.

MELP recommended that the district manager and licensee show caution by changing the cutblocks to category I until the cutblocks in winter range were field-inspected. The licensee refused to change the cutblocks to category I because it wanted certainty that it could log if it was going to do costly assessments. The district manager was aware of this conflict and saw no legal basis to reject cutblocks because they had not been field reviewed.

The district manager said he was satisfied under section 41(1)(b) of the Act that the forest resources of the area to which the plans applied would be adequately managed and conserved. In his rationale, he explained that the licensee had committed to field inspections in the 1999 field season. He assumed that winter range issues could be dealt with at the stand level through silviculture prescription approval.

The Board does not understand how doing a field review with MELP would ensure that winter range would be managed and conserved. On the one hand, there may be cases where stand-level measures may protect ungulate winter range values and logging is acceptable to MELP. On the other hand, after a joint field inspection, if MELP was of the opinion that the winter range needed to be left undisturbed to ensure survival of an ungulate population, the condition in the FDP would have been fulfilled and the licensee would have category A approval. The licensee could perform the required assessments and submit a silviculture prescription that is consistent with the FDP. Therefore, even if MELP recommended that no harvesting should occur, the district manager would be obligated to approve a suitable silviculture prescription and logging could proceed in the winter range.

MELP's comment about winter range in the FDP raised doubt that winter range would be managed and conserved by the FDP. Therefore, the Board considers that it was inappropriate for the district manager to be satisfied that winter range would be managed and conserved in the 16 cutblocks that MELP recommended not approving.

iii) Marbled murrelet nesting habitat

The marbled murrelet is a small, threatened seabird that requires large stands with old-growth attributes to nest successfully. The main threat to marbled murrelet is logging of nesting habitat. In 1998, the licensee helped fund MELP-led mapping of potential marbled murrelet habitat in the Sunshine Coast Forest District. The results were not available until 2000, well after submission of the 1999-2003 FDPs. The government had not made other information about marbled murrelet habitats known under the Code.

MELP identified marbled murrelet as a species of concern in its general comments on the FDPs. There was only one block-specific marbled murrelet comment on the 1999-2003 FDPs, on a cutblock that was not proposed for approval. There were no comments concerning known nest sites and information about marbled murrelet had not been published (let alone made known under the Code). Policy direction indicated that wildlife habitat areas for marbled murrelet were being considered through landscape unit planning. Therefore, the Board considers that it was appropriate, at that time, for the district manager to be satisfied that marbled murrelet habitat was adequately managed and conserved.

Did the licensee place cutblocks in areas that had high biodiversity and wildlife values to pre-empt the areas from being given formal status under the Code?

The complainant asserts that the FDPs targeted timber for logging in potential old-growth management areas (OGMAs), wildlife habitat areas or UWR to prevent them from being established. The complainant also asserts that the district manager facilitated targeting areas of old-growth deficit by releasing the old-growth deficit analysis to the licensee.

The licensee denied that it used this information to target cutblocks to pre-empt areas from being established. The district manager denied that the purpose of the letter he sent—dated

October 2, 1998, identifying old-growth deficits—was to facilitate proposing category A cutblocks in areas with old-growth deficits.

In areas where there is little mature forest remaining, the competition for the various forest resources that depend on old growth increases. When licensees propose cutblocks in old growth or wildlife habitat, that area may simply be the best timber available. Furthermore, even if targeting had occurred, the Code does not restrict that practice. What the Code requires is that an FDP satisfies a district manager that the forest resources are managed and conserved. The investigation into the district manager's approval of the FDPs dealt with that issue.

Conclusions

1. It was not appropriate for the acting district manager to not grandparent goat winter range in the district.

2. It was appropriate for the district manager to be satisfied that biodiversity and marbled murrelet habitat would be adequately managed and conserved by the three FDPs. However, it was inappropriate for the district manager to be satisfied that goat winter range would be adequately managed and conserved in 16 cutblocks in two FDPs. Therefore, it was inappropriate for the district manager to approve those FDPs.

3. The assertion that the licensee had targeted sensitive areas for logging was not substantiated.

Commentary

Strategic planning

The chief forester and deputy minister of Water, Land, and Air Protection (MWLAP) have recently established 13 grizzly bear and 4 marbled murrelet WHAs in the district. Four landscape units have been established and marbled murrelet habitat has been incorporated into OGMAs in those landscape units. Both the district manager and the complainant feel that the district is at the forefront of provincial efforts in landscape-unit planning. The Board is encouraged by that news. However, the Board maintains its general concern that, for the most part in BC, landscape units and their objectives have still not been approved to address issues best dealt with at the landscape level.

In his rationale for approving two of the FDPs, the district manager stated: "I share MELP's concerns regarding elimination of the most desirable options to protect biodiversity, if LU planning is delayed any further." This complaint illustrates a finding of the Board's special report, *A Review of the Forest Development Planning Process in British Columbia,* that—in the absence of higher level plans—adequate measures for management and conservation of forest

resources must be debated and decided in each FDP. The Board encourages the government to complete landscape unit planning as soon as possible to reduce that inefficient practice.

Old-growth definition unclear

This investigation and several others in the Sunshine Coast Forest District have shown that different users and managers of the forest have different concepts of what constitutes "old growth." The Forest Practices Code does not provide a clear legal definition of "old growth" and the term is open to interpretation. The LUPG defines old growth as: "forests of a certain age or forests with the appropriate old forest attributes. Old growth and old seral are used interchangeably." The *Biodiversity Guidebook* does not define old growth, but defines old seral as: "forest that contains live and dead trees of various sizes, species, composition, and age class structure. Old seral forest ... includes climax forests but not sub-climax or mid-seral forests. The age and structure of old seral varies significantly by forest type and from one biogeoclimatic zone to another."

The LUPG provides the age criteria for old-seral stage by biogeoclimatic zone, but does not provide any detail on stand attributes necessary to meet the definition of old growth. Although the *Biodiversity Guidebook* discusses important attributes to meet biodiversity objectives at the landscape level, it does not provide specific attributes that must be present to attain old-growth designation. Old growth is ambiguously referred to in two Code guidebooks, and indirectly referred to in the OPR and *Woodlot Licence Regulation* through the definition of OGMAs. An OGMA is "an area established under a higher level plan which contains or is managed to replace structural old growth attributes."

It is no surprise that in many areas of the province the issue of "old growth" continues to plague forest managers. If government clearly defined old growth, then all parties interested in old growth would have an established baseline to discuss their concerns. As well, the Board believes that a clear definition of old growth is essential for a results-based code.

Ungulate winter range

The provision in the OPR that allowed mapped winter range to be grandparented has expired. However, section 69 of the OPR allows the chief forester and the deputy minister of MWLAP to establish UWR. MOF and MELP issued a joint memorandum of understanding dated May 11, 2000. That agreement states: "All Forest Practices Code candidate ungulate winter ranges are to be finalized as quickly as possible, and those meeting the conditions of this MOU confirmed by October 15, 2003."

One guiding principle of the agreement is that candidate winter ranges (grandparented or non-grandparented) be identified as quickly as possible to ensure that the habitat necessary for the winter survival of ungulate species can be identified, approved and protected. The district manager expects MWLAP to finalize their district UWR submission in the near future. MWLAP staff are currently waiting for the Ministry of Sustainable Resource Management (MSRM) to complete an analysis of the impacts of the UWR. However, MSRM is a new ministry and

responsibility for the analysis has not yet been assigned. The Board recognizes that MOF, MSRM and MWLAP are actively working to establish UWR under section 69 of the OPR. The Board encourages the ministries to complete that process as soon as possible.

On another UWR issue, the Board found an inconsistency in the Code. Section 21 of the OPR allows statutory decision-makers to rescind approved cutblocks in newly established wildlife habitat areas, but not in newly established UWR. The district manager pointed out that UWR could be established as a higher level plan, thereby allowing statutory decision-makers to rescind approved cutblocks in UWR as well. However, higher level plans are not likely to address UWR, particularly in the foreseeable future. UWR is much more likely to be established by the chief forester and the deputy minister of MWLAP under section 69 of the OPR.

Recommendations

In accordance with section 185 of the *Forest Practices Code of British Columbia Act*, the Board makes the following recommendations:

1. The Board recommends that government amend section 21 of the OPR to allow the district manager to rescind or revisit approved cutblocks in newly established UWR.

2. The Board reiterates a recommendation already made to government, to complete its current initiatives for old-growth retention in landscape unit plans as soon as possible and to broaden the scope of landscape unit planning to provide clear and measurable objectives for the full range of forest resources.

3. The Board recommends that government establish a clear and legal definition of old growth.

In accordance with section 185 of the *Forest Practices Code of British Columbia Act*, the Board asks the Ministry of Forests to advise the Board by January 1, 2003, of the steps taken to address these recommendations.

[i] The Role of Public and Referral Agency Comments in the Application of Section 41(1)(b) of the *Forest Practices Code of British Columbia Act*, February 12, 1999; and General Bulletin 18: Forest Practices Code Section 41(5) Approving Forest Development Plans After October 15, 1998, December 18, 1998.